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GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute:—Industrial Dispute between the Workmen and the Management of the Karnatak Co-operative Textile Mills Ltd., Hubli

Award of the Labour Court, Hubli—Published.

Read the following papers :

(1) Letter No. 711 /70-71, dated 10th November 1970 from Sri W. K. Kulkarni, Presiding Officer, Labour Court, Hubli.

BEFORE THE LABOUR COURT, HUBLI

Reference (ID) LCH Claim No. 47/69

Sri W. K. Kulkarni, B.A. (Hons.) LL.B., *Presiding Officer.*

Dated 4th November 1970.

Claimant.—Sri G. L. Naidu T. No. 1135, his cause sponsored by the workman of Rashtreeya Girani Mazdoor Sangh, Hubli.

Vs.

Respondent.—The management of the Karnatak Co-operative Textile Mills Ltd.,

1. This is a reference made by the State Government under Section 10 (1) (C) of the Industrial Disputes Act 1947 which will be, hereinafter, referred to as the Act. Following points are referred to this 'Court' by the State Government :—

1. Are the Management of the Karnatak Co-operative Textile Mills, Ltd., Hubli justified in retiring Sri G.L. Naidu, T. No. 1135 Electric Department, from service with effect from 3rd May 1969.
2. If not, to what relief is the said workman entitled?

2. The facts leading to this reference are in brief are as following

3. The claimant was working under the Respondent management as a wireman since 16th June 1960. The Respondent is a co-operative textile Mill and it started working from 16th June 1960 and ever since then the claimant was employed in it as a wireman. Admittedly the Mill was running in loss from the beginning and in the year 1968 there were heavy losses. So the Management was thinking of closing the Mill. At the same time Order 18 of the Standing Orders provides that a worker is liable to be superannuated on his attaining 58 years. So in May 1968 the Respondent issued a notice to the claimant stating that he was appearing more than 58 years old and so he should either produce his birth extract or appear before the Medical Officer of the Mill to determine his age. After this notice the claimant did not produce his birth extract nor did he appear before the Medical Officer of the Mill. But he appeared before R.M.O. of K.M.C. Hospital Hubli, and obtained from him a certificate that he was only 55 years old. He went with that certificate to the Respondent who refused to accept the same and issued another notice to the claimant in January 1969 stating that either the birth extract should be produced or the worker should appear before the Medical Officer of the Mill. The worker did neither. Then it appears that he approached the E.S.I. Medical Officer, Hubli with the certificate of R.M.O. of K.M.C. Hospital Hubli. The Medical Officer of E.S.I. certified that it was not necessary for me to examine the worker since the R.M.O. of K.M.C. Hubli had already issued a certificate. The result was that inspite of second notice the worker neither appeared before the Medical Officer of the Mill nor did he produce his birth extract. So the Management passed an order holding that the worker had attained 58 years and he was made to retire with effect from 3rd May 1969. Thereafter the claimant produced some birth extract before the respondent who did not accept it. All his attempts to persuade the Respondent to take him on duty failed.

4. Eventually the claimant got this reference made by the State Government.

5. The claim statement is filed and so also the counter of the Respondent. The Respondent contends that the order of retirement was justified because inspite of two opportunities given to the claimant he neither produced his birth extract nor did he appear before the Medical Officer of the Mill. Under these circumstances the Respondent contends that his retirement was justified and it should not be set aside. In any case the Respondent contends that

even if the order of retirement is set aside there can not be any re-instatement, since the mill has been closed down since 1st July 1969, after issuing closure notices to all the workers and even if the order of retirement is set aside the claimant is only entitled to the compensation as provided in Section 25 FFF of the Act.

6. So the following points arise for determination.

1. Whether the management of the Mill was justified in retiring the claimant?
2. If not what relief is the claimant entitled to?

My finding on this points are :

- (1) No.
- (2) As per award.

7. The claimant is examined as WW-1 and on behalf of the Respondent the Office Superintendent Sri Dundappa Patil is examined as MW-1. Besides several documents are produced by both the sides. Some facts are not in dispute. It is not disputed that the claimant was serving under the Respondent since 16th June 1960. The first notice issued by the Respondent to the claimant is at Ex. D-1 dated 30th May 1965. The Managing Director of the Mill has signed it. It states that since the worker appeared more than 58 years old he should either produce his birth extract or he should appear before the Medical Officer of the Mill. Sri Dundappa MW-1 was not able to say as to on what basis the management concluded that the claimant looked more than 58 years old. No doubt the order No. 18 of the standing orders of the Mill provides that the worker should retire on attaining 58 years. But the question is how the age is to be ascertained. Order 18 does not prescribe any procedure. Now the Medical Officer of the Mill was appointed under Section 45 of the Indian Factories Act of 1948 and Rules framed by the Bombay Government under this Act were in force in this area at the relevant time and Rule 71 of the Bombay Factories Rules provides that, that the ambulance room or dispensary shall be in charge of a qualified medical practitioner. By virtue of this provision the Mill had appointed a Doctor. It would be clear from the Section 45 of the Factories Act and rule 71 of the Bombay Factories Rules that this Doctor was appointed only for the purpose of 'First Aid', since more than 500 workers were employed in the Mill the Mill Doctor was not not mean for ascertaining the age of the workers.

8. Now coming back to the narration of events, after receipt of notice Ex. D-1 the claimant went to R. M. O. of K. M. C Hospital and got a certificate from him as per Ex. P-2. R. M. O stated in this certificate that in his opinion the claimant was 55 years old and also by appearance his age was 55 years. Admittedly the claimant produced this certificate before the Respondent who refused to accept it and returned it. In my opinion the Respondent was not justified in not accepting this certificate and insisting on the worker to appear before the Medical Officer of the Mill. The birth extract of the claimant was not available. So the only evidence was by way of examination by the doctor. K M. C. Hospital is the biggest hospital in this area and if the R.M.O. of that hospital certified about the age of claimant there was no justification for Respondent to refuse it and insist on the claimant being examined by their Doctor. The contention of the claimant is that the Mill was about to be closed and so it was trying to reduce its liability and with that intention it was trying to sack as many workers as possible. That is why the Respondent *mala-fide* issued the notice regarding age to the claimant and insisted that he should be examined by the Doctor of the Mill. Then the claimant says that he was afraid that the Mill doctor would be influenced by the management and so he did not appear before the Doctor of the Mill and got the certificate of age from R.M.O. of K.M.C. Hospital. This conduct of the claimant is, in my opinion, quite justified. The action of the Respondent in not accepting K. M. C. certificate and insisting on the worker being examined by the doctor of the Mill is, in my opinion not justified and motivated by considerations of any how retrenching as many persons as possible, because the mill was on the threshold of closure. Thereafter Respondent issued another notice Ex. D-2 to worker on 2nd January 1969. The same demands were repeated in this notice from the claimant. He however did not appear before the doctor of the Mill nor did he produce his birth extract. It appears that the matter was taken to the Assistant Labour Commissioner, Belgaum Division, Hubli by the General Secretary, Bashtreya Girani Mazdoor Sangh, Hubli. The reply given by the Assistant Labour Commissioner to the General Secretary is at Ex. P-4 dated 17th August 1968. In this letter the Assistant Labour Commissioner says 'in case of uneducated persons the management have come to the conclusion that a certificate regarding the age given by the E. S. I. Doctor should be accepted. You are therefore requested to intimate as to whether the grievance still services' Therefore the worker went

to the Medical Officer of E. S. I. at Hubli and requested him to examine himself and issue a certificate. It appears that he took with himself the certificate of R. M. O. of K. M. C. Hospital Ex. P-2. The claimant also took with him the letter addressed by the General Secretary, Rashtreeya Girani Mazdor Sangh, Hubli to the Medical Officer of E. S. I. as per Ex. P-3. On this, the Medical Officer of E. S. I. Dr. Nadiger has endorsed as following:

"It is already issued by R. M. O., K. C. M. Our higher officer of E. S. I.

On this ground the Medical Officer of E. S. I. refused to examine and issue another certificate to the worker. The conduct of the claimant is in my opinion quite justified. It appears that the R. M. O. of K. M. C. is superior to E. S. I. Medical Officer Hubli and according to E. S. I. Doctor the certificate of R. M. O. should prevail. But unfortunately the Respondent refused to accept this certificate and eventually the Respondent issued an order EX. D-3 dated 3rd May 1969 retiring the claimant with effect from that date. It is this order, that is being challenged now as illegal and unjustified. In my opinion the order is illegal and unjustified. If the Respondent was not prepared to accept the Medical Certificate of R. M. O. of K. M. C. the worker was not bound to appear before Medical Officer of the Mill for examination. As I have stated earlier the Medical Officer of the Mill was only ment for giving first aid. There was no statutory duty impose on him either under any Actor Rules, to issue certificates of age to workers. If the Medical certificate of R. M. O. was accepted then the claimant was only 55 years and he could not have been retired: In this view the order of retirement is unjustified and illegal. It appears because the management wanted to close down the Mill on account of financial losses, it was trying to retrench as many workers as possible by hook or crook. The only ground urged by the Respondent for retirement of claimant is that the claimant refused to appear before the Mill doctor. But was the management of the Mill justified in asking him to appear before the mill doctor when he had produced the certificate of R. M. O. of K. M. C. Hospital regarding his age? My answer to this question is in the negative. So the sole ground of retirement falls down and it has to be set a side.

9. Then the worker has produced his E. S. I. card Ex. P-1 in which his date of entry into service and also the year of birth are

mentioned. The year of birth is given as 1914. If this age is correct then the worker was only 55 in 1969. It is true that the year of birth as 1914 was mentioned in this card only on the declaration made by the worker. But then this declaration was not challenged by the management till 1968. It can not be said that the Respondent was not aware of this card, because it bears Insurance No. and status of the worker. The management also contributes to the insurance fund along with the worker. While so doing the management must be presumed to have looked into this card and still the year of birth was never challenged. Although this was only a declaration made by the worker, there is no reasons to suppose that he made a false declaration when this card was prepared. His case is consistent. He could not be blamed for not having appeared before the Mill doctor, who he thought, would have been influenced by the Management of the Mill.

10. At this stage I should refer to the fact that the worker has not examined on his behalf, the R. M. O. who issued certificate Ex. P-2. But then Dundappa MW-1 admits that this certificate was produced before the Managing Director. So the genuineness of the certificate is not in dispute. The fact that R. M. O. issued such certificate is not disputed. The Respondent insisted that the said doctor should be produced for cross examination. That is altogether a different matter. It is true that no reasons are given in the certificate and R. M. O. is not examined. But then Sri Apte the learned Advocate for the claimant says that the worker does not know the address of the said R. M. O. and he has been since transferred to some place unknown to the worker. And the poor worker is not in a position to summon the said doctor. I accept this ground as genuine. Moreover the genuineness of the certificate is not disputed. The only question is whether the Respondent was justified in insisting that claimant should appear before the Mill Doctor and in coming to the conclusion that the claimant had attained 58 years, on sole ground that he refused to appear before the Doctor of the Mill, and also on the ground that he had not produced the birth extract. The birth extract of so many people are not available and if the birth extract of the illiterate worker was not available, he cannot be blamed for that. And his non-appearance before the Mill Doctor also was justified because he had obtained a certificate from R. M. O. of K. M. C. Hospital to the effect that he was only 55 years old and he had produced this certificate before the Respondent. Under these circumstances, the Respondent could not have come to the

conclusion that the claimant had attained 58 years. In the notice Ex. D-1 it is stated that the claimant 'Looked' as if he had completed 58 years. But nobody could come to such a conclusion by a mere look and this conjecture was disproved by the worker by producing the certificate of R. M. O. of K. M. C. Under these circumstances the Respondent could not have come to the conclusion that he had attained 58 years and could not have retired him. In my opinion the Respondent was about to close its mill and in fact it closed its mill on 1st July 1969 and on the evidence of MW-1 himself there were heavy losses in 1968 and the management of the Mill must have thought of the device of retrenching the worker on some ground, to reduce the liabilities of the Mill.

11. I should state at this stage that the worker has produced some harscope in this Court. But it does not bear any signature and I am not prepared to accept this as genuine. If this was genuine harscope, he would have produced it before the Respondent after receipt of notice. Then the worker says that after the second notice Ex. D-2 dated 2nd January 1969 he appeared before the Mill Doctor who refused to examine him. I do not believe this story. The worker says that he went to the Mill doctor on that day with letter dated 11th June 1968 Ex. P-7 signed by the Labour Welfare Officer of the Mill. This letter must have been given to this worker after the first notice was issued, to him. This is clear from the date 11th June 1968. Admittedly he did not appear before the Mill doctor then. If it is so, there was no reason for him to appear before the Mill doctor after second notice was issued. So I reject the story that he appeared before the Mill Doctor after second notice and the Mill doctor refused to examine him on the ground that R.M.O. of K.M.C. had examined him. But apart from this evidence of claimant my above discussion will show that the mill was not justified in coming to the conclusion that the worker had attained the age of 58 and in passing an order of retirement. So I set aside the order retiring the claimant.

12. That brings me to the second question namely to what relief the claimant is entitled. Obviously he cannot be reinstated because the mill was closed down due to heavy financial losses from 1st July 1969. The worker was retired with effect from 3rd May 1969 and he has been paid wages till the end of that day. So he is entitled to wages from 4th May 1969 till 30th June 1969. Besides he is also entitled to one months wages as no notice

of retrenchment as per Sec. 25F was served on him. Thus he is clearly entitled to wages for two months and 28th days. The petitioner has mentioned his wages including D.A. as Rs. 5-65/- per day in his claim statement. This fact is not denied in the written statement of the Respondent. So I take this rate for fixing wages. Wages for 2 months and 28 days come to Rs. 497-20. Then undoubtedly the claimant is entitled to retrenchment compensation as provided in Sec. 25 FFF of the Act. According to the claimant he has completed 9 years of service from 16th June 1960 to 30th June 1969, and so far every completed year of service he claims wages for 15 days. Thus he claims wages for 135 days. But the respondent contends that he is entitled to only wages for 3 months, relying on proviso to Sec. 25 FFF (1) of the Act. On behalf of the Respondent it is contended that the mill had to be closed down on account of unavoidable circumstances beyond the control of the management of the Mill. It has to be noted that in the written statement Respondent did not contend that the mill had to be closed down due to unavoidable circumstances beyond the control of the employer. It was only stated in the written statement para 11 that the mill was closed down with effect from 1st July 1969. Then Dundappa Patil MW-1 stated that from the beginning, the mill was running in loss and since 1968-69 it was in heavy losses and so, it was closed down on 1st July 1969. He further stated that the management was thinking of closing the mill from 1968 on account of losses. The explanation to the proviso to Section 25 FFF (1) of the Act reads as following :

"An undertaking which is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed of stocks shall not be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section

The evidence of MW-1 clearly shows that the mill had to be closed down on account of financial losses. He does not refer to any other cause for closure of the Mill. So I have to hold that the Mill had to be closed down merely on account of financial losses. If that is so, the Mill was not closed down on account of unavoidable circumstances beyond the control of the employer. Thus the proviso to sub-section 1 of Section 25 FFF does not apply to this case and retrenchment compensation for 135 days must be paid by the Respondent to the claimant. On behalf of the Respondent reliance was placed on the decision of the Supreme

Court in Hathising Manufacturing Co., Ltd., and Union of India and others LLJ 1960 (II) P. 1, I have read this decision carefully. But it does not apply to this case. In that case their Lordships of the Supreme Court were considering the constitutionality of Section 25 FFF. The relevant observations are at page 10 of the report. If an undertaking is closed down on account of persistent losses due to no fault of the employer or due to accumulation of stocks having regard to persistent unfavourable market conditions, the closure may normally be regarded as due to unavoidable circumstances beyond the control of the employer. MW-1 stated that there was loss in the mill from the beginning. But he did not state that it was due to no fault of the employer. The losses in the present case might have been due to the fault of the employer. In my opinion, the Respondent has failed to establish by adducing any evidence that the Mill had to be closed down on account of unavoidable circumstances beyond the control of the employer. In this view the Respondent must pay to the claimant 15 days wages for every completed year of service. The claimant has undoubtedly completed 9 years of service. So he is entitled to wages for 135 days That comes to Rs. 762 75. We have to add to this Rs 497-20 being the wages from 4th May 1969 to 30th June 1969, plus wages for one month in lieu of notice. Thus the claimant is in all entitled to Rs. 1259-95. I round it off to Rs. 1260. Hence my award.

AWARD

13 The Order passed by the management of the Respondent Mills retiring the claimant is hereby set aside. Since the Mill is closed down from 1st July 1969, the question of re-instatement does not arise. However the respondent must pay to the claimant Rs. 1260 as arrears of wages and compensation under Section 25 FFF of the Act together. There will be no order as to costs of this proceeding.

W. K. KULKARNI,
Presiding Officer,
Labour Court, Hubli.

“ True copy ”

W. K. KULKARNI,
Presiding Officer,
Labour Court, Hubli.